In the Supreme Court of the United States

OCTOBER TERM, 1976

NO. 76-1589

JERRY DAWKINS, et al.,

Petitioner

versus

NABISCO, INC. BAKERY and CONFECTIONARY UNION LOCAL NO. 42

Respondents

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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LIST OF AUTHORITIES

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SUPREME COURT OF THE UNITED STATES

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NO.

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The Petitioner, Jerry Dawkins is appearing pro se, I respectfully pray that this Court will read liberally my petition for a Writ of Certiorari, to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit entered in this proceeding on March 25, 1977.

OPINION BELOW

A Pro Se Motion to reopen Civil Action No. 16431, denied by the United States District Court for the Northern District of Georgia, affirmed by the United States Court of Appeals for the Fifth Circuit two opinions is appended to this petition hereto.

JURISDICTION

The Judgment of the United States Court of Appeals for

the Fifth Circuit was entered March 25, 1977. This petition was filed within ninety (90) days of that date. This Court's Jurisdiction is invoked pursuant to U.S.C. § 1343 (4); 42 U.S.C. § 200 3-5 (f) and 28 U.S.C. §§ 2201 and 2202 also 29 U.S.C. §151 et seq.

QUESTION PRESENTED

(1) Whether the United States District Court for the Northern District of Georgia can block and completely destroy a job discrimination class action lawsuit.

(2) Whether the District Court can prohibit the Petitioner from fairly and adequately representing and protecting the interests of all members of the class, if the class is so numerous that joinder of all members is impracticable, Rule 23(A) Federal Rules of Civil Procedure.

(3) Whether the District Court or the Court of Appeals can deny the Petitioner retroactive seniority; the Petitioner first filed a complaint with the Equal Employment Opportunity Commission on July 28, 1971, in an attempt to obtain retroactive seniority from the time of discrimination in the summer of 1956, and the years of 1959 and 1960; Nabisco merged the men and women seniority list in 1971 to avoid sex discrimination and Blacks, as a class, hired after the effective date of the Civil Rights Act dropped to the bottom rung of the seniority ladder, the U.S. Supreme Court's decision, Frank v. Bowman March 24, 1976 was remanded back to the U.S. Court of Appeals for the Fifth Circuit.

(4) *Whether case No. 16431 can be reopened because the Federal Courts completely destroyed the class action, and*

denied the Petitioner retroactive seniority, the trial testimony of the Petitioner in Civil Action File No. 16431 is the gravamen for retroactive seniority.

CONSTITUTIONAL PROVISIONS INVOLVED

(1) Federal Rules of Civil Procedure, Rule 23(A) Class Action: one or more members of a class may sue or be sued as representative parties on behalf of all only if: (1) The class is so numerous that joinder of all members is impracticable, (2) There are questions of law of fact common to the class, (3) The claims or defense of the representative parties typical of the claims or defense of the class, and (4) The representative parties will fairly and adequately protect the interests of the class.

(2) The Civil Rights Act of 1964 42 U.S.C. Sec. 2000e.

(3) The Civil Rights Act of 1866 42 U.S.C. Sec. 1981.

(4) President John F. Kennedy's Executive Order 10925, July 1960 which established the President's Committee on Equal Employment Opportunity Commission.

(5) United States Supreme Court's decision *Harold Franks v. Bowman Transportation Company*, No. 74-728 decided March 24, 1976.

(6) United States Supreme Court's decision *Albermarle Paper Co. v. Moody*, No. 74-389 decided June 25, 1975.

STATEMENT OF THE CASE

In the trial of October 1st and 2nd 1973 in the United States District Court for the Northern District of Georgia,

the Attorneys for the Petitioner and the presiding Judge Charles A. Moye, Jr. instructed the Petitioner not to talk about the class, but to talk only about the past discrimination in hiring and retroactive seniority, and on October 2, 1973 Judge Moye ruled from the bench against the Petitioner for retroactive seniority, the Attorneys for the Petitioner appealed to the United States Court of Appeals for the Fifth Circuit, without the record, the appendix, neither the transcript, and on July 30, 1975 the Fifth Circuit Court of Appeals affirmed without published opinion, the Petitioner terminated his Attorneys for not fighting the Federal Courts for destroying the Class.

REASON FOR GRANTING THE WRIT

The Petitioner obtained the transcript in No. 16431 and on June 1, 1976 filed an independent motion to reopen No. 16431, attached to the motion were two U.S. Supreme Court Landmark Exhibits, *Harold Frank v. Bowman Transportation Co.*, No. 74-728 decided March 24, 1976 and *Albemarle Paper Company v. Moody*, No. 74-389 decided June 25, 1975.

The pro se motion was filed on three counts, the class had been completely destroyed by the District Court and for a court order to award the Petitioner retroactive seniority from the time of the original discrimination, the summer of 1956, and for continuous harassment and on July 13, 1976 the Petitioner filed a new complaint in Federal District Court, No. C76-1165A and on September 9, 1976 the District Court consolidated No. C76-1165A with No. 16431 and denied the motion to reopen, on September 15, 1976 the Petitioner filed a Notice of Appeal to the Fifth Circuit, and on March 25, 1977 the Court of Appeals for the Fifth

Circuit affirmed the District Court with respect to No. 16431, but reversed and remanded with respect to C76-1165A.

Case No. 16431 must be reopened because hundreds of White women and approximately forty (40) Blacks have been victims of sex and race discrimination at Nabisco, for over fifty years, some who have now retired, have not had their day in court. The Blacks were hired only to do janitorial work. The only way the Petitioner, Jerry Dawkins can claim retroactive seniority is to reopen No. 16431 review the Petitioner's trial testimony of October 1, 1973.

Recent further investigations by the Petitioner have revealed that in September of 1954, White men were victims of job and sex discrimination at Nabisco; they were removed from the machine classification positions and replaced by White women whose pay was much less, in an effort to utilize cheap labor.

CONCLUSION

For the serious reasons stated, a Writ of Certiorari should be issued to review the judgment and opinions of the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted,

Jerry Dawkins
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Petitioner Pro Se
(404) 792-7446

CERTIFICATE OF SERVICE

I hereby certify that I served three copies each, of the petition for Writ of Certiorari on the Counsels for the Respondents, postage prepaid to:

Mr. Charles K. Howard, Jr.
Elarbee, Clark & Paul
800 Peachtree - Cain Tower
229 Peachtree Street N.E.
Atlanta, Georgia 30303

Mr. Patrick M. Scanlon
Adair, Goldthwaite, Stanford and Daniel
600 Rhodes - Haverty Building
Atlanta, Georgia 30303

This the day of May, 1977.

Jerry Dawkins,
Petitioner Pro Se

APPENDIX A

PER CURIAM

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 73-3992

JERRY DAWKINS and DOUGLAS GRAY,
Plaintiffs-Appellants,

versus

NABISCO, INC. and BAKERY and CONFECTIONARY
UNION LOCAL NO. 42,
Defendants-Appellees

Appeal from the United States District Court for the
Northern District of Georgia

(June 30, 1975)

Before GOLDBERG and RONEY, Circuit Judges and LYNNE, District Judge.

PER CIRUAM: AFFIRMED. See Local Rule 21.[1]

This case was briefed and argued by appellants as a class action. Plaintiffs were denied the right to prosecute this case as a class action by the district court, and we can find no reversible error in such ruling.

1. See N.L.R.B. v. Amalgamated Clothing Workers of America, 5 Cir., 1970, 430 F.2d 966.

The resolution of issues of fact in cases arising under Title VII is given the same deference on appeal as in non-civil rights cases, *i.e.*, we examine only whether the lower court's finding is "clearly erroneous." *Martin v. Thompson Tractor Co.*, 486 F.2d 510, 512 (5th Cir. 1973); *Smith v. Delta Air Lines, Inc.*, 586 F.2d 512, 514 (5th Cir. 1973); *Bradley v. Southern Pacific Co.*, 486 F.2d 516, 517-518 (5th Cir. 1973). To obtain relief in our Court, therefore, the two plaintiff employees must show the district court to be clearly erroneous in its detailed findings of fact that the plaintiffs themselves have not been discriminated against in violation of Title VII or 42 U.S.C.A. § 1981. Although the plaintiffs point to certain evidence from the record that might support a *prima facie* assertion of some kind of discrimination against somebody by the employer, it does not compel a finding of discrimination against these plaintiffs. The plaintiffs having the burden of proof, it is incumbent on them on appeal to show that they carried that burden in the trial court. No transcript of the testimony has been filed with this Court even though one is required by Rule 10 (b), F.R.App. P., when the district court's finding are attacked as clearly erroneous. On the record before us, we cannot determine that there was insufficient evidence before the district court to support its findings of fact. *See, e.g., United States v. Bob Lawrence Realty, Inc.*, 474 F.2d 115, 126 (5th Cir.), *cert. denied*, 414 U.S. 826 (1973); *Green v. Aetna Ins. Co.*, 397 F.2d 614, 619 (5th Cir. 1968). We cannot hold the district court to be clearly erroneous.

OPINION OF CIRCUIT COURT OF APPEALS

Jerry DAWKINS, Plaintiff-Appellant

v.

NABISCO, INC., and Bakery and Confectionary Union Local No. 42, Defendants-Appellees

NO. 76-3738

Summary Calendar.*

United States Court of Appeals, Fifth Circuit

March 25, 1977

In two Title VII actions, the United States District Court for the Northern District of Georgia at Atlanta, Charles A. Moye, Jr., J., entered judgment adverse to plaintiff and plaintiff appealed. The Court of Appeals held that 1972 judgment resolving employee's claim that employer and union had retaliated against employee for participation in early Title VII proceedings were not res judicata as to suit based on post-1973 retaliation for participation in the same Title VII proceedings.

Affirmed as to one action; reversed and remanded as to section action.

1. Courts - 405(16.16)

Record on appeal from judgment adverse to plaintiff in Title VII action disclosed no basis for reopening judgment.

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* Rule 18, 5 Cir.; *see Isbell Enterprises, Inv. v. Citizens Casualty Co. of New York et al.*, 5 Cir. 1970, 431 F.2d 409, Part 1.

Civil Rights Act of 1964, § 704(b), 42 U.S.C. § 2000e-3(a); Fed. Rules Civ. Proc. rule 60(b), 28 U.S.C.A.

2. Federal Civil Procedure - 656

Pro se complaint in Title VII action would be read liberally. Civil Rights Act of 1964, §701 et seq., 42 U.S.C.A. § 2000e et seq.

3. Judgment - 739

Judgment entered in 1972 Title VII action in which employee alleged that employer and union had retaliated against employee for his participation in earlier Title VII proceedings was not res judicata as to suit for post-1973 retaliation for participation in the same Title VII proceedings. Civil Rights Act of 1964, §701 et seq., 42 U.S.C.A. § 2000e et seq.

4. Judgment - 634

Among the goals of res judicata is inducing litigants to economize on law suits.

5. Judgment - 720

Judgment in 1972 Title VII action had collateral estoppel effect and precluded employee from relitigating in 1976 Title VII action issues actually resolved against him in the 1972 action. Civil Rights Act of 1964, § 704(b), 42 U.S.C.A. § 2000e-3(a); Fed. Rules Civ. Proc. rule 60(b), 28 U.S.C.A.

Appeal from the United States District Court for the Northern District of Georgia.

Before GOLDBERG, CLARK and FAY, Circuit Judges.

PER CURIAM:

Before us on this appeal is a district court judgment disposing of two Title VII actions adversely to the plaintiff. Appellant Jerry Dawkins, an employee of Nabisco, brought both actions against the company and his union, the first in 1972 (No. 16431) and the second in 1976 (No. C76-1165A) Both actions claim, among other things, that appellees have retaliated against Dawkins for his participation in earlier Title VII proceedings, thus violating 42 U.S.C. § 2000e-8(a).

I.

[1] Trial of the first action resulted in a judgment against Dawkins in 1973, and this court affirmed without published opinion. *See* 515 F.2d 1181, 5 Cir. In June 1976 Dawkins moved to reopen the judgment. The district court denied the motion, and Dawkins appeals. We find no basis for reopening the judgment and therefore affirm. *See* Fed. R. Civ. P. 60(b).

II.

In the more recent action the district court dismissed Dawkins' complaint, relying solely on the res judicata effect of the earlier judgment. We conclude that the causes of action underlying the two complaints are not identical,

and we therefore reverse and remand for further proceedings. *See generally* F. James, Civil Procedure § 11.10 (1965); *Stevenson v. International Paper Co.*, 516 F.2d 103 (5th Cir. 1975).

[2,3] Reading the 1976 pro se complaint liberally, as we must, we find that it alleges discrimination more recent than the termination of the 1972 action. Therefore, although the 1972 action resolved a claim of retaliation for participation in the same Title VII proceedings, the earlier action did not and could not resolve the claim based on post-1973 retaliation.

[4,5] Among the goals of the res judicata doctrine is inducing litigants to economize on lawsuits, but we could not possibly expect Dawkins to litigate a claim based on 1975 retaliation in a law-suit that terminated in 1973. Were we to rule that the 1973 adjudication was somehow dispositive of the factual dispute regarding alleged subsequent retaliation, a company that had once won a suit alleging retaliation for participation in Title VII proceedings would be free to retaliate at will against the earlier plaintiff without fear of being held accountable for its actions. The law of res judicata establishes no such result. The judgment in the earlier suit does not bar Dawkins' 1976 action.[1]

Our result means that a Title VII plaintiff is free to bring successive actions, claiming in each that his employer has taken retaliatory actions against him more recent than the prior lawsuit. That prospect, however, does not impel us to

1. The earlier judgment does, of course, have collateral estoppel effect. Dawkins will not be free to relitigate factual issues actually resolved against him in the earlier litigation.

depart from settled res judicata principles. There are other methods for dealing with frivolous lawsuits.

The order of the district court is AFFIRMED with respect to No. 16431 and REVERSED and REMANDED with respect to No. C76-1165A.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1976

NO. 76-1589

JERRY DAWKINS,
Petitioner,

versus

NABISCO, INC., and BAKERY AND CONFECTIONARY UNION LOCAL NO. 42,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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Nabisco, Inc.

June 1977

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

OPINIONS BELOW

This case was decided by the United States District Court for the Northern District of Georgia in 1973. The district court proceedings are reported at 6 CCH Employment Practices Decisions Paragraph 8754 (procedural ruling on whether the case should proceed as a class action) and 7 CCH Employment Practices Decisions Paragraph 9348 (the ruling on the merits). The district court was affirmed by the United States Court of Appeals for the Fifth Circuit in June of 1975 which is reported at 515 F.2d 1181. In 1976,

Petitioner filed a motion to reopen the case in the United States District Court for the Northern District of Georgia which was denied. A copy of the decision of the district court is reproduced in Appendix A to this opposition. The United States Court of Appeals for the Fifth Circuit affirmed (which decision is reported at 13 CCH Employment Practices Decisions Paragraph 7153).

JURISDICTION

Petitioner does not state a proper jurisdictional base for this Court to invoke jurisdiction in his Writ.

COUNTER STATEMENT OF STATUTE INVOLVED

This case involves only the application of Federal Rule of Civil Procedure 60(b). The text of the rule is set forth in full in Appendix B to this brief.

COUNTER STATEMENT OF QUESTION PRESENTED

Whether the Fifth Circuit Court of Appeals erred in affirming the judgment of the United States District Court for the Northern District of Georgia refusing to reopen a final judgment pursuant to Federal Rule of Civil Procedure 60(b) rendered on October 26, 1973, when the motion to reopen was filed on June 11, 1976, over two and one-half years after entry of final judgment and did not state proper grounds to reopen.

COUNTER STATEMENT OF THE CASE

The Petitioner instituted a class action alleging racial discrimination in employment against the Respondents in April of 1972 in the United States District Court for the Northern District of Georgia. The court did not allow the case to proceed as a class action and rendered judgment on the merits against the Petitioner. In the judgment rendered on October 26, 1973, the district court found that the seniority system at the Nabisco plant where Petitioner was employed was nondiscriminatory, that promotions, layoffs and shift assignments were made on a nondiscriminatory basis, and that plaintiff Dawkins had not been discriminated against on account of his race. 1/ This judgment was appealed to the Fifth Circuit Court of Appeals where it was affirmed by per curiam opinion on June 30, 1975. No petition for a rehearing was filed by Petitioner nor was a writ taken to this Court. The judgment became final.

On June 11, 1976, Petitioner filed a motion to reopen the judgment in the district court. The district court refused to reopen the case on the grounds that the motion to reopen was not timely, that

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1/ There is no basis in the record for the statements made by Petitioner in his brief claiming discrimination due to his "recent further investigations."

Petitioner had failed to allege any mistake, newly discovered evidence or fraud, and had failed to state a reason sufficient to justify relief under 60(b)(6). Petitioner appealed this judgment to the Fifth Circuit Court of Appeals which affirmed the judgment stating:

> "Trial of the first action resulted in a judgment against Dawkins in 1973, and this court affirmed without published opinion. See 515 F.2d 1181, 5 Cir. In June 1976 Dawkins moved to reopen the judgment. The district court denied the motion, and Dawkins appeals. We find no basis for reopening the judgment and therefore affirm. See Fed. R. Civ. P.60(b)."

ARGUMENT

There is no special or important reason to grant a writ in this case. Petitioner seeks to have this Court review a judgment of the Fifth Circuit Court of Appeals affirming the application by a lower court of Rule 60(b) of the Federal Rules of Civil Procedure. The ruling of the Fifth Circuit is not in conflict with that of any other circuit, nor is it in conflict with any decision of this Court. The proceedings below were proper and did not depart from the accepted and usual course of judicial proceedings and no basis is present for a review of the decision of a United States Court of Appeals under Rule 19 of this Court. Rice v. Sioux City Cemetery, 349 U.S. 70, 73-74 (1955).

Respondent respectfully prays that the Writ be denied.

Respectfully submitted,

ELARBEE, CLARK & PAUL

By: _____
Fred W. Elarbee, Jr.

By: _____
Charles K. Howard, Jr.
800 Peachtree-Cain Tower
229 Peachtree Street, N.E.
Atlanta, Georgia 30303

CERTIFICATE OF SERVICE

This is to certify that I have this day served a copy of the foregoing Brief in Opposition to Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit on Petitioner, Jerry Dawkins, 151 Dahlia Avenue, N. W., Atlanta, Georgia 30314 and on Patrick M. Scanlon, 600 Rhodes Haverty Building, Atlanta, Georgia 30303, Attorney for Bakery and Confectionary Workers Union No. 42, by placing copies thereof in the United States Mails in a properly addressed envelope with adequate postage thereon.

This ____ day of June, 1977.

_____
Charles K. Howard, Jr.

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

JERRY DAWKINS

v. C76-1165A

NABISCO, INC., and
BAKERY AND CONFECTIONARY
UNION LOCAL NO. 42

ORDER

This is a civil rights action for monetary damages filed by Jerry Dawkins against Nabisco, Inc. (Nabisco), alleging harassment by Nabisco employees following plaintiff's filing a complaint with the Equal Employment Opportunity Commission (EEOC) in July 1971, in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq. (Title VII). Plaintiff also alleges a breach of the duty of fair representation by defendant Local No. 42, Bakery and Confectionary Workers International Union of America (the Union). Simultaneously plaintiff has pending a motion to reopen the case of Dawkins v. Nabisco, Inc., Civil Action No. 16431, under Fed. R. Civ. P. 60(b). That case was litigated over a one and one-half year period in this Court, with the action being finally dismissed in October 1973.

These cases are presently before the Court on the following motions: (1) plaintiff's motion to reopen Civil Action

No. 16431; (2) the defendant Union's motion to consolidate the separate pending actions, Civil Nos. 16431 and C76-1165A; and (3) on the defendants Nabisco and Union's motions to dismiss under Fed. R. Civ. P. 12(b)(6).

Inasmuch as the motion to consolidate is unopposed, such motion is hereby ORDERED GRANTED. (See Local Rule 91.2.

The plaintiff's allegations in his complaints are: (1) defendant Nabisco has violated Title VII by harassing plaintiff in retaliation for the filing of a lawsuit; (2) plaintiff is suffering an "anxiety neurosis" as a result of having been docked on the payroll by defendant; (3) the defendant Union has failed to represent the plaintiff fairly and has thus violated 29 U.S.C. §151 et seq; (4) defendant Nabisco discriminated against plaintiff by failing to hire him in 1956, 1959, and 1960, and is therefore liable to plaintiff for back pay.

The defendants contend that the substantive legal issues at bar have previously been litigated by the parties and that the doctrine of res judicata thus bars any further litigation. Defendants also contend that Fed. R. Civ. P. 60(b) is inapplicable in the circumstances presented.

Res Judicata

The doctrine of res judicata applies to bar an action where: (1) the prior judgment was rendered by a court of competent jurisdiction; (2) there has been

a final judgment on the merits; (3) the parties, or those in privity with them, are identical in both suits; and (4) the same cause of action is involved in both suits. If these elements are established, litigation is barred as to any issue which was or should have been presented in the prior case. Stevenson v. International Paper Co., 510 F.2d 103, 108-09 (5th Cir. 1975). Inasmuch as a final judgment in Civil Action No. 16431 was rendered by this Court and affirmed by the Fifth Circuit Court of Appeals, the only substantial question is whether or not the same cause of action is involved in the two cases.

The issue of alleged harassment of plaintiff by Nabisco was resolved against plaintiff in the prior suit, as was the question of Nabisco's failure to hire plaintiff in 1956, 1959 and 1960 and to promote him after he was hired. In fact, the Court found in Civil Action No. 16431 that plaintiff "had full opportunity to bid, promote and transfer to the highest paying jobs in the company's plant."

The plaintiff's allegation that he has developed an "anxiety neurosis" as a result of harassment by the defendant does not state a cause of action where the underlying issue of the harassment has been litigated.

Finally, the issue of the Union's breach of its duty to afford the plaintiff fair representation was presented and decided adversely to plaintiff in Civil Action No. 16431. The doctrine of res judicata thus applies to bar relitigation of any of plaintiff's allegations.

Motion to Reopen under Rule 60(b)

Rule 60(b) provides that a judge may relieve a party from final judgment where the party shows: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been previously discovered; (3) fraud; (4) the judgment is void; (5) the judgment is satisfied; or (6) any other reason justifying relief from the operation of the judgment. The motion must be made within one year of final judgment for courses (1), (2), and (3), and within a reasonable time for cause (6). Final judgment was entered in this case on October 26, 1973. Plaintiff filed his motion to reopen on June 11, 1976, more than two and one-half years later. An intervening appeal does not enlarge the time for filing of the motion. Transit Casualty v. Security Trust, 441 F.2d 788, 791 (5th Cir. 1971). Plaintiff has not alleged any mistake, newly discovered evidence, or fraud. The motion based on Fed. R. Civ. P. 60(b)(1), (2), or (3) must therefore fail.

To succeed under Rule 60(b)(6), plaintiff must prove "another reason justifying relief." The rule has been used only under exceptional circumstances, Hoffman v. Celebrezze, 405 F.2d 833 (8th Cir. 1969); it has not been viewed as a panacea for unhappy litigants. Plaintiff claims that the recent Supreme Court decision in Franks v. Bowman, 44 U.L.L.W. 4356 (March 26, 1976) holding that seniority relief must be given to blacks denied employment because of their race after the effective date of Title VII is controlling and

mandates an award of back payment to plaintiff. This argument has no merit because the Court found in Civil Action No. 16431 that Dawkins had not been discriminated against by Nabisco. Plaintiff alleges no other facts justifying relief under Rule 60(b)(6).

The Court recognizes that the plaintiff is proceeding pro se and has therefore construed the plaintiff's complaint and motion liberally. However, inasmuch as the issues raised by plaintiff have all been completely litigated against the same parties previously, the plaintiff's motion to reopen is hereby ORDERED DENIED and defendants' motions to dismiss are hereby ORDERED GRANTED.

SO ORDERED, this 9th day of September, 1976.

s/Charles A. Moye, Jr.
UNITED STATES DISTRICT JUDGE

APPENDIX B

APPENDIX A

Rule 60(b) Federal Rules of Civil Procedure, Relief from Judgment or Order

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc. On motion and upon such terms as are just,the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to grant relief to a defendant not actually personally notified as provided in Title

28, U.S.C. § 1655, or to set aside a judgment for fraud upon the court. Writs of coram, nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.